is based shall be stated or appear in evidence before his opinion is given. *Raub v. Carpenter* (1902) 187 U. S. 159, 23 Sup. Ct. 72; *Williams v. Philadelphia Rapid Transit Co.* (1917) 257 Pa. St. 354, 101 Atl. 748. The basis for this rule is that the jury will thus be enabled to determine whether or not the facts upon which the opinion is predicated are correct, and to permit other experts to pass on the same facts. But it has been indicated that the rule rests upon an incorrect theory and usurps the province of cross examination. See (1917) 26 YALE LAW JOURNAL, 502. Most jurisdictions exclude, as hearsay evidence, statements to a physician during an examination if made in order that he will be able to testify. 3 Wigmore, *Evidence* (1905) sec. 1721. However, an opinion partly based on the statements of the injured person as to present symptoms is generally admitted. 1 *ibid.*, sec. 688. But not if based entirely on such statements, when they are made out of court. *People v. Ebanks* (1897) 117 Calif. 652, 49 Pac. 1049. It is submitted that the conclusion reached in the principal case is not desirable. It is probably the result of combining the rule requiring the facts upon which the expert opinion is based to be stated, with the rule excluding, as hearsay evidence, statements made during an examination to a physician for the purpose of securing his testimony. But the latter rule did not apply, because such statements, when given as the foundation of an opinion, do not have hearsay quality. *Chicago, R. I. & P. Ry. v. Jackson* (1917, Okla.) 162 Pac. 823. The strict enforcement of the rule of the principal case would practically prohibit expert testimony in such cases, because the statements of the patient, as to present symptoms, at least, are a necessary element of the expert's opinion.

EVIDENCE—FOOTPRINTS—WHEN ADMISSIBLE TO PROVE IDENTITY.—In a trial for murder the county attorney was permitted to testify that he had seen footprints near the scene of the killing, that he had requested the defendant to show him his boots, and that, in his opinion, the tracks were made by the defendant's boots. *Held,* that the evidence was too indefinite and its admission was error. *Burkhalter v. State* (1919, Tex. Cr. App.) 212 S. W. 163.

Footprints are a species of "identity evidence." When offered to show that an act must have been done by some human being, there can be no doubt as to their admissibility. *State v. Daniels* (1904) 134 N. C. 641, 46 S. E. 743; see *Leonard v. State* (1907) 150 Ala. 89, 93, 43 So. 214, 216. But when offered to show that an act must have been done by a particular human being, the rule of admission narrows. At best, such evidence requires an indirect mode of inference, since "rarely can one circumstance alone be so inherently peculiar to a single object." 1 Wigmore, *Evidence* (1904) sec. 411. An actual measurement of both shoe and footprint or a physical comparison by super-position is usually required. *Ballenger v. State* (1911) 63 Tex. Cr. Rep. 657, 141 S. W. 91; *State v. Harrold* (1866) 38 Mo. 496. The opinion of the witness as to the identity is inadmissible. *Dubose v. State* (1906) 148 Ala. 560, 42 So. 862; *State v. Green* (1893) 40 S. C. 328, 18 S. E. 933; but see *State v. Ancheta* (1915) 20 N. M. 19, 27, 145 Pac. 1086, 1088. When the witness is the maker of the shoes his opinion is admissible on the ground, it would seem, that it is expert testimony. *Newton v. State* (1912) 65 Tex. Cr. Rep. 87, 143 S. W. 638. There is a conflict of authority as to when the procurement of such evidence violates the defendant's immunity from self-incrimination. When the defendant voluntarily submits to the comparison, as in the principal case, there is clearly no violation. *Webb v. State* (1914) 11 Ala. App. 123, 65 So. 845; *State v. Sirmay* (1912) 40 Utah, 525, 122 Pac. 748. But when he is coerced or ordered to submit to the comparison, the evidence has been held inadmissible. *Elder v. State* (1915) 143 Ga. 363, 85 S. E. 97; see *State v. Sirmay, supra,* 536. However, the better view is that the immunity from self-incrimination extends only to testimonial utterances. *State v. McIntosh* (1913)

94 S. C. 439, 78 S. E. 327; *State v. Graham* (1876) 74 N. C. 646; *State v. Thompson* (1912) 161 N. C. 238, 76 S. E. 249; see (1918) 27 YALE LAW JOURNAL, 412; see also (1919) 28 *ibid.*, 703.

NEGLIGENCE—CERTIFIED PUBLIC ACCOUNTANTS.—The defendants were certified public accountants and as such audited the books and accounts of a certain company. The plaintiff purchased stock in the company, relying upon the defendant's audit, which was shown to him by a third party. The plaintiff and this third party were both strangers to the contract of accounting between the defendants and the company. The defendants had been negligent in their audit and the plaintiff suffered loss thereby, as the stock was in fact worthless, contrary to the figures of the defendant's audit. The plaintiff sued in an action of trespass for the damages resulting to him from this negligence. *Held,* that the plaintiff could not recover because the defendants were not liable to anyone not a party to the contract for the accounting. *Landell v. Lybrand* (1919, Pa.) 107 Atl. 783.

In the principal case, the defendants owed the plaintiff no contractual duty. But courts realize that in some similar cases of negligence, a contractual duty is unnecessary to support an action; and have allowed recovery by third persons where the negligence was such that it was inherently dangerous, and the resulting damage was reasonably forseeable by ordinarily prudent men. *Wolcho v. Rosenbluth* (1908) 81 Conn. 358, 71 Atl. 566; see COMMENT (1918) 27 YALE LAW JOURNAL, 1068. The principal case seems to be in accord with the existing law, but its justice and expediency are questionable. It has been held that certified public accountants constitute a skilled professional class and are liable for negligence to one who employs them. *Smith v. London Assurance Corporation* (1905) 109 App. Div. 882, 96 N. Y. Supp. 820. Stock companies are accustomed to advertise, as an assurance of their good standing, that certain named public accountants have audited their books and accounts and have certified to their financial standing. Public expediency demands, aside from the criminal aspect, that accountants who have been guilty of fraud in such cases should be held liable to one who, relying in good faith upon their certified audit as they intended he should, bought stock and thereby suffered loss. Furthermore, it seems that public accountants, who are recognized as a responsible class in the business world, should be compelled to exercise due care in their audits, upon which, as can be reasonably forseen, many strangers may act. And all the more so, because they have the election to contract or not. However, an attorney who acted in good faith has been held not liable to third persons in an action of tort for negligence. *Campbell v. Brown* (1876, C. C. W. D. Tex.) 2 Woods, 349. But an attorney cannot reasonably be expected to forsee that strangers will probably act on his advice, for experience shows otherwise. And this reasoning seems to apply also to cases of physicians, because a doctor prescribes for a particular patient and does not intend, nor is it reasonably probable, that third parties will rely and act upon his advice to this particular patient. But neither of these classes of cases conflicts with the proposition that public accountants should be held liable to third parties for negligence, when it is reasonably forseeable that third parties may act upon their audits. And if the courts will not impose this duty to the public, then it is submitted that this is a case for legislative enactment.

NEGLIGENCE—CONTRIBUTORY NEGLIGENCE—EMPLOYMENT OF INFANTS.—The plaintiff was employed to run an elevator in violation of a statute which provided that no child under sixteen years of age should be employed or permitted to operate an elevator. The plaintiff was injured while so employed and sued for personal